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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* CHRISTOF FALLER and RAZIEL HAIMI-COHEN

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Appeal 2011-004943  
Application 12/262,239  
Technology Center 2600

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Before JOSEPH F. RUGGIERO, MICHAEL J. STRAUSS, and  
LARRY J. HUME, *Administrative Patent Judges*.

RUGGIERO, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the Final Rejection of claims 1-20. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

Rather than reiterate the arguments of Appellants and the Examiner, reference is made to the Appeal Brief (filed Aug. 9, 2010), the Answer (mailed Oct. 26, 2010), and the Reply Brief (filed Nov. 18, 2010). Only those arguments actually made by Appellants have been considered in this

decision. Arguments which Appellants could have made but chose not to make in the Briefs have not been considered and are deemed to be waived (*see* 37 C.F.R. § 41.37(c)(1)(vii)).

### *Appellants' Invention*

Appellants' invention relates to buffer control in a digital audio broadcasting (DAB) system in which decoder buffer level limits are specified in terms of maximum number of encoded frames. The value of the number of encoded frames in the decoder buffer is predicted by the transmitter and transmitted to the receiver with the audio data. The transmitter predicted buffer level is used to determine when the decoder should begin decoding frames and to synchronize the transmitter and receiver. *See generally* Abstract.

Claim 1 is illustrative of the invention and reads as follows:

1. A method for synchronizing a receiver and a transmitter in a communication system, said method comprising the steps of:

receiving a number indicating a predicted number of encoded frames in a buffer;

comparing said number indicating a predicted number of encoded frames to an actual number of encoded frames in said buffer; and

adjusting a clock frequency based on said comparison.

*The Examiner's Rejection*

Claims 1-20 stand rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement.<sup>1</sup> Ans. 3-4.

ANALYSIS

The Examiner has taken the position that Appellants' disclosure lacks a written description of receiving "a **number indicating** a predicted number of encoded frames in a buffer" as recited in independent claims 1, 8, and 15. Ans. 4 (Examiner's emphasis). The Examiner's analysis also notes that the same predicted *number* of encoded frames feature is recited in independent claims 1, 8, and 15 in connection with a comparing operation in which the predicted number is compared with an actual number of encoded frames in the decoder buffer.

We note that in order to satisfy the written description requirement, the disclosure must reasonably convey to skilled artisans that Appellants possessed the claimed invention as of the filing date. *Ariad Pharms., Inc. v. Eli Lilly & Co.*, 598 F.3d 1336, 1351 (Fed. Cir. 2010) (en banc). We recognize that the Examiner, in support of the stated position, has directed attention to portions of Appellants' disclosure which describe the comparison of the actual encoder buffer level with the predicted level  $F_{pred}$ , but do not explicitly mention that  $F_{pred}$  is a *number* indicative of the predicted number of encoded frames. Ans. 5 (citing Spec., page 5, lines 1-5, page 10, lines 6-8, and page 10, line 29 to page 11, line 3).

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<sup>1</sup> The Examiner has withdrawn the 35 U.S.C. § 102(b) rejection of claims 1-20. Ans. 3.

We agree with Appellants, however, that other portions of Appellants' Specification *explicitly* disclose that the transmitted predicted value  $F_{pred}$  received by the receiver is a *number* indicative of a predicted number of encoded frames in the decoder buffer. App. Br. 4; Reply Br. 2-3 (citing Spec., equation (1), page 5, lines 3-5, and page 8, lines 10-12). Further, as argued by Appellants, the predicted number of encoded frames feature is also recited in original claim 1. Reply Br. 2-3.

In view of the above discussion, it is our opinion that, under the factual situation presented in the present case, the statutory written description requirement has been satisfied because Appellants were clearly in possession of the claimed invention at the time of filing of the application. Therefore, we do not sustain the Examiner's rejection of claims 1-20 under the first paragraph of 35 U.S.C. § 112.

### CONCLUSION

Based on the analysis above, we conclude that the Examiner erred in rejecting claims 1-20 as lacking an adequate written description under 35 U.S.C. § 112, first paragraph.

### DECISION

The Examiner's 35 U.S.C. § 112, first paragraph, rejection of claims 1-20, is reversed.

### REVERSED

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